the interference analyses, and automatic grants, the Two-way Proponents have laid the groundwork for a chaotic situation in which many licensees will not be able to ascertain whether interference will occur, there will be no serious Commission review, and final grants of interfering applications will occur.

a. Filing window. As proposed, the Two-way Proponents' plan would place an enormous premium on being first in line. Because there would be a huge financial windfall to entities who can identify temporarily unserved portions of incumbents' service areas and thereby grab frequency previously licensed to those incumbents, "third party lessees" i.e., wireless cable operators who are not currently licensed will be incented to undertake massive filings to take advantage of the gold rush. At the same time, incumbents, both BTA holders and older PSA licensees, will be incented to make protective filings to "fill in " areas where service may not really be needed now but which would otherwise be lost to speculators. The result will be a massive deluge of filings which would be unnecessary if licensing is properly limited to existing licensees. In that latter context, licensees would work carefully with their lessees - rather than vying ferociously with them - to develop two-way systems and make the appropriate filings in a gradual, evolutionary timetable tied to the actual provision of service rather than to a regulatory land rush mentality.

The "first come, first served" elements of the proposal also will place an unbearable burden on the limited engineering resources available to ITFS and MDS operators. It is unclear from the NPRM whether the "rolling" filing window applies to different regions of the country seriatim[4]/, but in any case there will be huge numbers of applications to be filed - and evaluated for interference - in extremely short time periods. The lesson of the post-auction long form filing deadline is that the numbers of engineers available to perform these kinds of tasks are so severely limited that they cannot possibly get the job done for every one. The inevitable result is that the largest operators, or those with in house staffs, will roll over the small independent ITFS and MDS operators who cannot secure bulk engineering services. These companies would have automatic operating authority and routine grants before affected licensees could sift through the mountain of data dropped upon them. This may explain why the largest wireless cable operators are proponents of this filing scheme.

b. Resolution of conflicting applications. MDS LICENSEES agree that filers of conflicting applications should be given the opportunity -and, indeed, encouraged - to resolve their differences between themselves. However, in the absence of such agreement, we see no alternative than for the Commission to become the resolver of the conflict. This is the very essence of the

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[4]/ To ameliorate this problem, any rolling window should be by areas no bigger than states.

Commission's function. If there is interference to a pre-existing station or if there are mutually exclusive applications, it is up to the Commission, not an arbitrator, to resolve the dispute.

c. Automatic operating authority and automatic grants. The NPRM seeks comment on the possibility of automatic operating authority (upon the filing of a response hub station application) and automatic grants after 61 days, in the absence of a protest. MDS LICENSEES believe that in the absence of a Master Plan, it is too risky for the Commission to permit either operating authority or grant to occur automatically. If past history is any guide, we can be sure that applicants will file applications asserting that there is no interference to other protected users, but protected users will have equally compelling reasons to believe that there will be interference. Even in the absence of a protest by the potentially affected party, the Commission should not assume that a proposal is valid without having reviewed the interference analysis submitted. (Often interference analyses have failed to take into account some of the protected stations, thus leading to a false engineering conclusion that the application is acceptable. The Commission's review currently catches such errors.) Automatic operating authority subject to later protest is generally not a good policy because, once service to a customer is initiated, there is a very strong inclination not to interrupt or terminate service. Yet, this would be necessary if an affected party filed a petition or if the Commission later discovered a problem on its own.

Alternatively, if the Commission did allow operation to commence under these circumstances, it should be without prejudice to the affected party to identify interference at a later point and require the offending transmissions to be terminated by simply sending a notification of same. Thus, any operating authority or grant which occurred without prior Commission review would be explicitly conditioned on non-interference to protected licensees and the automatic shut down of interfering transmissions upon notification by the protected licensee that interference was occurring.

H. Antenna Site Usage

In the environment contemplated by the NPRM, there will be an even greater need for coordination amongst adjacent channel operators than in the current, much simpler regime. There will be an explosion of new siting requirements for the various hubs and booster stations which are contemplated. Given the siting problems that many licensees are facing across the board for radio facilities, the Commission should explicitly require that licensees in this service must use their best efforts to make available space at their sites, whether by requiring that space be leased at reasonable terms on owned towers or by requiring non-exclusive and non-preclusive arrangements with tower lessors.

I. Existing MDS and ITFS Lease Agreements Should Not Be Unilaterally Modified by the New Rules

The entry into two-way operations is something that was, in most instances, not contemplated or provided for in existing ITFS and MDS leases. It would be most inappropriate for the Commission to use these lease agreements as a basis for handing over rights to lessees which were never envisioned by the parties. Not surprisingly, it is the beneficiaries of such a windfall who are seeking such authority. Perhaps more importantly, many ITFS leases and MDS leases are couched in terms of "channels", either explicitly or implicitly referring to 6 MHz video channels. Yet in the new two-way world, there may be hundreds or even thousands of "channels" being used in the same 6 MHz of space. Most of the MDS and ITFS leases now extant date back to the 1980's or even earlier. Virtually every facet of these leases, from royalty arrangements to control to maintenance, will be rendered obsolete by two-way digital operations such as the ones contemplated by the NPRM. The entire regulatory fabric under which the agreements were reached will have been rewoven.

Among other issues is the question of what constitutes a "channel." Many MDS and ITFS lease agreements are predicated on the use of allocated bandwidth for a channel or channels of communication. Historically, a six megahertz band could deliver a single analog video/audio channel. More recently, with digital compression technology now available, six, eight or more video

"channels" can be produced in the same bandwidth. In the two-way data transmission environment, every distinct customer link with a separate data stream is a distinct "channel."[5]/ To avoid confusion and disputes within the industry, the Commission should therefore define "channel" to mean "any substantially distinct packet or stream of content (excluding system administration information) transmitted to an end user by an MDS or ITFS licensee."

Since the Commission is proposing to grant expansive new rights to lessees of MDS and ITFS stations -- rights which were never contemplated at the time the leases were signed -- the Commission should also stress that lessees may not compel licensees without their consent to file for any of the new facilities made possible by the two-way proposal.

Conclusion

As we indicated at the outset, MDS LICENSEES are excited at the possibilities which the Two-way proposal raises for new and expanded use of the MDS/ITFS band However, the Commission should not be railroaded by the highly interested parties who are the prime proponents of this plan into adopting rules which amount to either a give-away or a rollover to these interests. The integrity of the licensing process can best be preserved by (1) encouraging

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[5]/ See, for example, "Bits Really Don't Need Bones," Management Accounting, November, 1997.

licensees to come together in regional Master Plans and permitting highly streamlined regulation for participants in such plans while (2) preserving to the greatest possible extent the vested interference protection and other rights of existing licensees who, for whatever reason, prefer to provide other services over their channels or to have their own independent two-way system.

Respectfully submitted,

ALLIANCE OF MDS LICENSEES

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January 8, 1998

Appendix A

Baypoint TV, Inc.
Kannew Broadcast Technologies
Des Moines One Partnership
Jed Becker d/b/a Becker Broadcasting
JRZ Associates
MMDS Las Vegas, Inc.
East West Communications, Inc.
L.M. Beal, Jr.
Lawrence N. Brandt
Columbia Wireless Corporation
Aesco Systems, Inc.
Hubbard Trust
Stephanie Engstrom
Jack Hubbard
David Weichman
Theodore Little
MMDS Mankato, Inc.
MMDS Ft. Myers, Inc.
Springfield M One Partnership